

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Yanjiao Chen	Team: Team # 3	CCRB Case #: 201400185	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 12/31/2013 2:25 PM	Location of Incident: 71st Avenue and Queens Boulevard	Precinct: 112	18 Mo. SOL 6/30/2015	EO SOL 6/30/2015	
Date/Time CV Reported Tue, 12/31/2013 2:41 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 01/07/2014 1:08 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Carlos Fabara	01279	922317	112 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Thomas Daniele	11161	941619	112 PCT
2. POM Matthew Foley	18980	943246	112 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Carlos Fabara	Abuse: Sgt. Carlos Fabara questioned § 87(2)(b)	

Case Summary

On December 31, 2013, § 87(2)(b) filed this complaint with IAB on behalf of her grandson, § 87(2)(b) generating IAB Log No. 20140257. The aforementioned complaint was forwarded to the CCRB on January 7, 2014. § 87(2)(b) did not witness this incident.

On December 31, 2013, at around 2:25 p.m., Sgt. Carlos Fabara, PO Thomas Daniele, and PO Matthew Foley approached § 87(2)(b) at the corner of 71st Avenue and Queens Boulevard in Queens. The following allegations resulted from the incident:

Allegation A: Abuse of Authority – Sgt. Carlos Fabara questioned § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

This case was originally assigned to Inv. Arlyn Rodriguez, and was reassigned to the currently undersigned investigator on April 28, 2014, upon Inv. Rodriguez's departure from the CCRB.

While this case was with Inv. Rodriguez, it was believed that § 87(2)(b) was filing a civil lawsuit with regards. Therefore, mediation was not presented, and an investigation was conducted.

Results of Investigation

Civilian Statements

Victim: § 87(2)(b)

- § 87(2)(b) was § 87(2)(b) old at the time of the incident. He is a black man who is 6' tall and weighs 180 pounds. He has black hair and brown eyes.
- § 87(2)(b) is a § 87(2)(b).

CCRB Statement

On February 20, 2014, § 87(2)(b) was interviewed at the CCRB (enc. C-3 – C-7). His in-person testimony was generally consistent with that of his telephone statement from June 3, 2014 (enc.), and is summarized below.

On December 31, 2013, at approximately 2:25 p.m., § 87(2)(b) was in the vicinity of 71st Avenue and Queens Boulevard in Queens near the 71st Avenue/Forest Hills train station. He was originally supposed to teach a chess lesson a block away from Queens Boulevard, but when he arrived at the residence, his student was absent. § 87(2)(b) then decided to visit an unidentified friend who lives on 136th Street. After about thirty minutes with his friend, § 87(2)(b) left, and walked for fifteen minutes to the train station, all the while talking on his mobile telephone with his grandmother, § 87(2)(b).

He did not stop at a bus station before stopping in front of the train station, where he stood for three minutes and continued speaking to § 87(2)(b). He informed § 87(2)(b) that he was going to cross the street to buy tea from a delicatessen, after which § 87(2)(b) placed his telephone in his pocket while § 87(2)(b) remained on the line.

§ 87(2)(b) crossed the street. When he arrived on the sidewalk, near a newspaper stand, Sgt. Fabara, PO Daniele, and PO Foley, who are all of the 112th Precinct and were identified via the investigation, approached § 87(2)(b) from behind and tapped him near his

shoulder. § 87(2)(b) stood a few feet from the three officers. (In contrast, § 87(2)(b) stated during his telephone statement that he never moved from his spot near the train station, and was still speaking with § 87(2)(b) when the officers approached him.)

Sgt. Fabara told § 87(2)(b) that the officers needed to talk to him and asked him what he was doing in the area. § 87(2)(b) explained that he was giving a chess lesson at a specified address. Sgt. Fabara then asked why § 87(2)(b) was near the train station if the chess lesson was not anywhere near the location. § 87(2)(b) responded that the lesson was canceled, and then asked why he was being questioned. Sgt. Fabara replied that some cars had been broken into in the neighborhood. § 87(2)(b) explained that he did not even have a driver's license, and that he felt as though he was being racially profiled.

§ 87(2)(b) asked the officers to speak to § 87(2)(b) on the telephone because she was frightened, as she did not know what was occurring. The officers refused to speak to § 87(2)(b). § 87(2)(b) spoke with § 87(2)(b) on the telephone and she told him to record the officers' shield numbers. Accordingly, § 87(2)(b) looked at the officers' shield numbers, which was displayed on their respective shields, and recited all of them to § 87(2)(b).

Afterwards, Sgt. Fabara, PO Daniele, and PO Foley told § 87(2)(b) that they were not going to bother § 87(2)(b) any further and walked away. Subsequently, § 87(2)(b) entered the train station.

Telephone Statement

§ 87(2)(b) filed the complaint for this incident, and provided a telephone statement on January 14, 2014 (enc. C-1). § 87(2)(b) did not witness the incident, and therefore was not asked to provide an in-person statement.

On December 31, 2013, at around 2:25 p.m., § 87(2)(b) was talking with § 87(2)(b) on the telephone when he was approached by officers near a subway station in Flushing, Queens. The officers stopped her grandson, § 87(2)(b) and asked him where he was going and who he was talking to on the telephone. § 87(2)(b) said that he was talking to his grandmother and the officers did not believe him. § 87(2)(b) who could hear the interaction, noted that the officers were speaking with an aggressive tone. § 87(2)(b) told § 87(2)(b) to stay on the line and asked him to give the telephone to the officers. The officers refused to speak to § 87(2)(b). § 87(2)(b) told § 87(2)(b) to get their shield numbers. After he recorded the shield numbers, the officers said he was free to leave. § 87(2)(b) believed that § 87(2)(b) was racially profiled.

NYPD Statements:

Subject Officer: SGT. CARLOS FABARA

- Sgt. Fabara was § 87(2)(b).
- On December 31, 2013, Sgt. Fabara worked in uniform from 9:30 a.m. to 6:27 p.m. as the burglary supervisor for the 112th Precinct. He worked with PO Thomas Daniele and possibly PO Matthew Foley in unmarked patrol car 1593.

Memo Book

Sgt. Fabara's memo book notes verbatim (enc. D-1 – D-3), "1425: Male stopped 71st Avenue Queens Boulevard. Suspicious behavior and strong odor of marijuana § 87(2)(b) § 87(2)(b) § 87(2)(b). 1433: 93Q #§ 87(2)(b)

CCRB Statement

On March 5, 2014, Sgt. Fabara was interviewed at the CCRB (enc. D-4 – D-5).

On December 31, 2013, at approximately 2:10 p.m., in the vicinity of 71st Avenue and Queens Boulevard in Queens, Sgt. Fabara observed § 87(2)(b) walk north, away from Queens Boulevard, toward a residential area. § 87(2)(b) was “hyper-vigilant” and behaved differently than everyone else around him. His head was “on a swivel,” as he looked around at windows and vehicles. Sgt. Fabara stated that auto thefts and burglaries are prevalent in the area.

Approximately ten minutes later, Sgt. Fabara spotted § 87(2)(b) again, this time he was walking back to 71st Avenue and Queens Boulevard. Sgt. Fabara found it odd that § 87(2)(b) spent such a short amount of time in a residential area. § 87(2)(b) stopped at a bus stop. After five minutes, one bus arrived, but, instead of boarding it, § 87(2)(b) crossed the street toward the south side of Queens Boulevard. Sgt. Fabara found it suspicious that § 87(2)(b) waited for the bus but chose not to board it.

On the corner of 71st Avenue and Queens Boulevard, § 87(2)(b) continued to look around at everything, as if he were casing individuals or vehicles. Because § 87(2)(b) appeared to be casing and exhibited suspicious behavior, Sgt. Fabara parked his patrol car and he, PO Daniele, and possibly PO Foley approached § 87(2)(b). As they approached him, a very strong odor of marijuana emanated from him.

The officers asked § 87(2)(b) for identification, what he was doing, and where he was going. Sgt. Fabara did not recall which officer asked the questions or how § 87(2)(b) eventually identified himself to the officers, either verbally or via presenting his license. § 87(2)(b) was not thrilled about being approached and complained that he often is stopped by the police. He stated that he was a § 87(2)(b) instructor and that he was teaching a lesson at a location that was very far from the incident location and was in the direction opposite to where § 87(2)(b) had been walking.

At some point, § 87(2)(b) was on the telephone with his grandmother, identified via the investigation as § 87(2)(b). After speaking with § 87(2)(b) for a couple of minutes, Sgt. Fabara, PO Daniele, and PO Foley left the scene. Sgt. Fabara believed that a Stop, Question and Frisk report was prepared by PO Daniele, but he was not certain.

Witness Officer: PO THOMAS DANIELE

- PO Daniele was § 87(2)(b).
- On December 31, 2013, PO Daniele worked in uniform from 9:30 a.m. to 6:05 p.m. alongside Sgt. Carlos Fabara and PO Matthew Foley. He was assigned to Burglary Auto for the 112th Precinct and was assigned to unmarked patrol car 1596, a black Ford Fusion.

Memo Book

PO Daniele’s memo book notes verbatim (enc. E-1 – E-3), “1426: One male stopped at 71st Ave and Queens Boulevard § 87(2)(b) § 87(2)(b) § 87(2)(b) old male black 6’2” 200 pounds black hair brown eyes dreads indicative of casing/as lookout on telephone walking up and down streets larceny from auto not frisked. Crime area for offense. Passport no address.”

CCRB Statement

On March 11, 2014, PO Daniele was interviewed at the CCRB (enc. E-4 – E-5). His statement was generally consistent with that of Sgt. Fabara and is summarized below.

On December 31, 2013 in the vicinity of 71st Avenue and Queens Boulevard in Queens, PO Daniele, observed § 87(2)(b) walk north toward a residential neighborhood. § 87(2)(b) was talking on his telephone, looking from side-to-side into car windows and houses.

After five to seven minutes, § 87(2)(b) returned to 71st Avenue and Queens Boulevard. As he walked, he looked into car windows and leaned into them. *Looking into cars* At that point, PO Daniele believed § 87(2)(b) was casing so he began observing him.

§ 87(2)(b) stopped at a bus stop. When the bus arrived, § 87(2)(b) walked away instead of boarding the bus. § 87(2)(b) walked to the subway station and stood on the top of the staircase but then walked away without walking into the station.

§ 87(2)(b) crossed the street toward the south side of Queens Boulevard. He stopped at another bus stop and looked around. After observing for about five to seven minutes, PO Daniele, Sgt. Fabara, and PO Foley exited the car and approached § 87(2)(b) and asked him what he was doing. PO Daniele did not know if he or Sgt. Fabara asked the question but stated that § 87(2)(b) was free to walk away at any point during the interaction and no officer was blocking his path or in any way preventing him from walking away.

§ 87(2)(b) became annoyed and asked why he was being stopped. PO Daniel and/or Sgt. Fabara explained that they saw him walking up and down the neighborhood looking around, and asked him what was going on. § 87(2)(b) replied that he was teaching a chess lesson in “The Gark,” which is a neighborhood on the south side, opposite to where § 87(2)(b) was walking. PO Daniel or Sgt. Fabara asked him why he was on the north side if his lesson was on the south side. § 87(2)(b) stated that his lesson was canceled.

One of the officers asked for identification and § 87(2)(b) provided his passport. PO Daniele recorded the information and returned the passport to § 87(2)(b). The officers then walked away. PO Daniel prepared the Stop, Question and Frisk Report for this incident in which he listed § 87(2)(b) name as § 87(2)(b) § 87(2)(b).

Witness Officer: PO MATTHEW FOLEY

- PO Foley was § 87(2)(b).
- On December 31, 2013, PO Foley worked in uniform from 7:50 a.m. to 3:40 p.m. alongside Sgt. Carlos Fabara and PO Thomas Daniele. He was assigned to the Conditions Unit for the 112th Precinct in unmarked patrol car 1596, a black Ford.

Memo Book

PO Foley’s memo book notes verbatim (enc. F-1 – F-3), “1426: One male stooped at 71st Avenue and Queens Boulevard § 87(2)(b) § 87(2)(b) male black Hispanic 6’2” 200 pounds, indicative of casing auto (larceny from auto). 1422 93Q, PO Daniele Sprint # § 87(2)(b).

CCRB Statement

On March 25, 2014, PO Foley was interviewed at the CCRB (enc. F-4 – F-5). His statement was generally consistent with that of Sgt. Fabara and PO Daniele, and is summarized below.

On December 31, 2013, at approximately 2:25 p.m., PO Foley, PO Daniele, and Sgt. Fabara were driving in the vicinity of 71st Avenue and Queens Boulevard in Queens to address the conditions in the neighborhood – car thefts and burglaries.

PO Foley observed § 87(2)(b) walk north, away from Queens Boulevard, while talking on his telephone. The officers drove around. After a few minutes, § 87(2)(b) returned to 71st Avenue and Queens Boulevard. As he walked, he looked at parked cars and driveways. § 87(2)(b)

§ 87(2)(b) waited at a bus stop but he walked away when the bus came. He walked across Queens Boulevard, in the direction opposite to where he had been going when he was first observed.

PO Foley, Sgt. Fabara, and PO Daniele approached § 87(2)(b). He seemed annoyed and asked why he was approached. One of the officers, PO Foley was not sure who, provided an explanation but PO Foley did not recall what specifically was said.

§ 87(2)(b) continued talking on his telephone and read off the officers' names and shield number. § 87(2)(b) provided his passport to PO Daniele. PO Foley did not ask § 87(2)(b) any questions. § 87(2)(b) said he was giving a chess lesson in the area. At the end of the incident, § 87(2)(b) asked if he was free to leave, and the officers told him yes. § 87(2)(b) then left the location. PO Daniele completed a Stop, Question and Frisk Report.

NYPD Documents

Roll Call

The 112th Precinct's Tour 2 Roll Call (enc. G-2 – G-9) from December 31, 2013 states that Sgt. Fabara, PO Daniele, and PO Foley were all assigned to the Conditions Unit.

Stop, Question, and Frisk Report

The Stop, Question, and Frisk report prepared for this incident was requested (enc. K-2). However the 112th Precinct returned the request stating that "upon conferral with crime analysis, no such 250 is on file. The above listed stop, question, and frisk report cannot be located."

Handwritten Stop, Question, and Frisk Log

The 112th Precinct's handwritten Stop, Question, and Frisk Log (enc. G-1), which the Inv. Rodriguez received on March 26, 2014, does not list a § 87(2)(b) § 87(2)(b) § 87(2)(b) for December 31, 2013.

Status of Civil Proceedings

- As of April 22, 2014, § 87(2)(b) has not filed a notice of claim with the City of New York with regard to the incident (enc. J-4).

Civilians Criminal History

- As of June 11, 2014, Office of Court Administration records reveal no criminal convictions for § 87(2)(b) (enc. H-1- H-5).
- As of June 11, 2014, Office of Court Administration records reveal no criminal convictions for § 87(2)(b) (enc. H-6 – H-9).

Civilians CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (enc. A-6).
- This is the first CCRB complaint regarding § 87(2)(b) (enc. A-7).

Officers CCRB History

- Sgt. Fabara has been a member of the NYPD for fifteen years (enc. A-1 – A-4), and there have been ten CCRB allegations substantiated against him:
 - Case no. 200508693 involved four abuse of authority allegations. The Board recommended charges for all of them, but the NYPD declined to prosecute three of them, and Sgt. Fabara received instructions for the remaining allegation.

- Case no. 200511684 involved two abuse of authority allegations, a question and frisk, for both of which the Board recommended Charges, and the NYPD failed to prosecute.
- Case no. 200512992 involved two abuse of authority allegations, a question and frisk, for both of which the Board recommended Charges, and the NYPD issued a command discipline.
- Case no. 200606723 involved two abuse of authority allegations, refusal to provide name and shield number and a frisk. The Board recommended Charges while the NYPD issued a command discipline for the first allegation, and failed to prosecute the second.

Conclusion

Identification of Subject Officer

Sgt. Fabara, PO Daniele, and PO Foley all confirmed their interaction with § 87(2)(b). Although, none of them could definitively recall whether it was Sgt. Fabara or PO Daniele who asked § 87(2)(b) questions, § 87(2)(b)'s description of the subject officer indicated that it was Sgt. Fabara.

§ 87(2)(b) described the subject officer as a white man, around thirty to forty years old, 5'10" tall, weighing 200 pounds, with dark hair and a small amount of facial hair. He described the other two officers as also being white men, around thirty to forty years old, and specified that the second officer was 6'4" tall, and weighing over two-hundred pounds.

PO Foley, who is 6'4" and weighs two-hundred sixty-five pounds, fits the description of the second officer. Between Sgt. Fabara, who is actually a Hispanic man with black hair, 5'11" tall, and one-hundred eighty-five pounds, and PO Daniele, who is a white man, 5'7" tall, and weighs one-hundred sixty-five pounds, Sgt. Fabara fits the description of the subject officer more.

§ 87(4-b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Investigative Findings and Recommendations

Allegation A: Abuse of Authority – Sgt. Carlos Fabara questioned § 87(2)(b)

§ 87(2)(b) alleged that Sgt. Fabara approached him and asked what he was doing in the area, and why he was at the corner of 71st Avenue and Queens Boulevard if his chess lesson was not in the vicinity. § 87(2)(b) also denied ever stopping at a bus stop during the incident.

Sgt. Fabara, PO Daniele, and PO Foley were generally consistent in describing § 87(2)(b) changing directions, wandering around, and stopping at a bus station without boarding a bus. This incident location had recently been subject to car thefts. The three officers' descriptions of their interaction with § 87(2)(b) were also generally consistent. However, PO Daniele specifically recalled that an officer, whom the investigation determined to be Sgt. Fabara, asked why § 87(2)(b) was on the south side if the latter's chess lesson was supposedly on the north

Although an officer may request information from a civilian with just “objective credible reason, not necessarily indicative of criminality” People v. Hollman, 79 N.Y.2d 181 (1992) (enc. AA-1 – AA-8), an officer may only engage in a common-law right of inquiry, which is defined as “a more intrusive type of question, more accusatory in nature and focusing on the possible criminality of the person approached,” when he or she “possesses a founded suspicion that criminality is afoot.” People v. Fields, 257 A.D.2d 387 (1st Dept. 1999) (enc. AB-1 – AB-2)

[illegible]

Investigator:	<u>Signature</u>	<u>Yanjiao Chen</u> Print	<u> </u> Date
Supervisor:	<u> </u> Title/Signature	<u> </u> Print	<u> </u> Date
Reviewer:	<u> </u> Title/Signature	<u> </u> Print	<u> </u> Date
Reviewer:	<u> </u> Title/Signature	<u> </u> Print	<u> </u> Date